

Kenya

Controversial presidential elections in December 2007 dominated events in 2008, exposing the longstanding lack of accountability in Kenyan political culture. Politicians on both sides of the political fence organized violence in the Rift Valley and western Kenya in January and February 2008, killing at least 1,133 people and displacing at least 300,000. International mediation produced a coalition government in March, returning a fragile stability to the country. Commissions established to investigate electoral fraud and post-election violence concluded that profound electoral reforms and a special tribunal to prosecute those most responsible for the violence were urgently needed.

Patterns of impunity by state security forces persist, with allegations of excessive use of force and extrajudicial killings shadowing the police. Military deployment in March to suppress a brutal insurgency in Mt. Elgon was characterized by mass arrests, detentions, disappearances, and systematic torture. Officials denied the military's responsibility for abuses.

Electoral Violence

Kenya is still reeling from the widespread violence following the presidential elections that saw President Mwai Kibaki returned to office. After the results were announced, youths allied to the opposition Orange Democratic Movement (ODM) began attacking Kikuyu and other tribes perceived to be supporters of the incumbent Party of National Unity (PNU) across the Rift Valley and in urban slums. Kikuyu gangs struck back, targeting Luo and other perceived opposition supporters, first in the Nairobi slums, and later, at the end of January, in the Rift Valley.

Some violence was prompted by spontaneous anger at the results, leading to the burning of cars and street protests. Police dispelled the crowds with live ammunition, killing over 400 people. However, the majority of the attacks on both sides were

premeditated and coordinated by local leaders and politicians seeking to gain from the forced displacement of certain ethnic groups. According to the Waki Commission (see below), at least 1,133 people died and over 300,000 were displaced.

After several months of unrest, Kenyans pulled back from the brink when former UN Secretary General Kofi Annan brokered a National Dialogue and Reconciliation Accord. The negotiations resulted in a government of national unity, agreement on the need for constitutional and land reforms, and the creation of commissions to investigate the crisis.

In September, the Independent Review Committee, chaired by South African judge Justice Kriegler to investigate electoral fraud, concluded that the electoral process had been so disrupted that it was impossible to tell who won the presidential poll. It recommended a series of reforms to the electoral law and procedures, including the replacement of the Electoral Commission.

In October, the Commission to Investigate the Post-Election Violence, chaired by Kenyan judge Justice Waki, published a damning report implicating senior politicians from both parties in organizing and encouraging the violence. The report also accused the police of excessive force. The commission recommended the creation of a special tribunal to investigate and prosecute those most responsible, along a strict timeline. In the event of non-compliance by the coalition government, the commission recommended that the Panel of Eminent African Personalities, headed by Kofi Annan, should forward a confidential list of individuals implicated in the violence, including ten senior politicians, to the International Criminal Court. The press and civil society strongly support the recommendations but the government, including both the president and the prime minister, has given mixed feedback.

Tens of thousands of people remain displaced. The government claimed at the end of October that 3,170 households remained in displaced persons camps. However, many have simply returned to “transit camps,” with no reliable services and no government support to rebuild their homes. In November the UN estimated 113,761 people still to be in such camps. The UN, NGOs, and the Kenyan National Commission for Human Rights criticized the government for violating the UN Guiding

Principles on Internally Displaced Persons, mismanaging resettlement programs and forcibly returning displaced people.

Atrocities in Mt. Elgon

The Kenyan government refuses to investigate and prosecute members of the police and army accused of committing systematic torture in Mt. Elgon. Security forces deployed in March 2008 in a joint operation to combat a two-year insurgency by the Sabaot Land Defence Force (SLDF), a militia allied to the local Member of Parliament, which had been terrorizing the district. Following the operation, the SLDF were much diminished and the extent of their crimes emerged: over 600 people killed since 2006; hundreds tortured, mutilated, and raped; and houses looted and destroyed.

However, members of the security forces also committed serious crimes, including extrajudicial killings and torture, in the course of counterinsurgency. Much of the male population was rounded up and beaten to force disclosure of the whereabouts of militia. Over 4,000 people were taken to military camps for “screening” where victims describe beatings, torture, and some deaths. More than 40 people are missing, last seen in military detention, and at least one grave containing seven bodies of people taken into military custody has been identified.

The United Kingdom and the United States have trained units of the 20th Parachute Regiment which was deployed in Mt. Elgon. Due to allegations of abuses, the UK announced in July 2008 that it was suspending training of 20 Para but resumed its military engagement two months later.

Police Impunity

Police were responsible for hundreds of deaths during the post-election violence and serious questions remain about the chain of command— who ordered the use of live rounds, and under what circumstances. The reluctance of the police to investigate its own conduct follows a well established pattern of impunity. Extrajudicial killings of members of the Mungiki criminal gang in Nairobi continued, adding to the more than 450 Mungiki linked killings last year. The Waki Commission recommended extensive

reform of the police force, including the setting up of an independent agency to investigate police conduct.

Regional Renditions

In October, eight Kenyan nationals were repatriated from Ethiopia, some 21 months after they were first arrested in Kenya in 2007 and deported to Somalia and then Ethiopia, along with at least 90 other men, women, and children. Another Kenyan—Abdikadir Mohammed Adan—remains in incommunicado detention in Addis Ababa, some 15 months after he was first arrested, and the whereabouts of others who have claimed Kenyan citizenship remains unknown. Altogether in 2006 and 2007, the Kenyan government detained approximately 150 individuals fleeing Somalia, including women and children. The government did not take any steps to secure the release of its citizens until August 2008, and still disputes the Kenyan citizenship of Adan. Another Kenyan citizen, Mohammed Abdulmalik, disappeared for a month after he was arrested by Kenyan officials in February 2007, before ultimately ending up in Guantanamo Bay.

Women's, Children's, and LGBT Rights

The Kenyan government scaled up HIV/AIDS services across the country, though the drugs still did not reach an estimated 250,000 HIV-infected people in urgent need of antiretroviral treatment. Only about nine percent of those receiving treatment are children. Barriers for children include a reluctance of caregivers to test children, food insecurity, transport costs, unavailability of child treatment at local health facilities, and the neglect and abuse of AIDS orphans.

Following violent school strikes in June, there was debate in government whether to reintroduce corporal punishment in schools. Child rights groups protested vigorously.

Kenya's current abortion law criminalizes abortion except to save a woman's life. As a result, many women resort to clandestine, unsafe abortions that cause up to 40 percent of maternal deaths. The proposed Reproductive Health and Rights Bill 2008 would legalize abortion in some cases.

Article 162 of Kenya's criminal code, an inheritance from British colonialism, punishes consensual homosexual conduct with up to 14 years' imprisonment.

Human Rights Defenders and Journalists

During the violence in January and February, human rights defenders and journalists were threatened by individuals and groups affiliated with the incumbent PNU party. Journalists and human rights activists who criticized security force abuses in Mt. Elgon are still being threatened by the military and the police. Two were forced to leave the country for a short period after publishing a press release detailing abuses by the SLDF and the military in April 2008.

Key International Actors

Following the electoral violence, a spectrum of international actors including the United Nations, African Union, and the US secretary of state applied significant pressure on the government of Mwai Kibaki to compromise and share power with the opposition. The cooperation between Kenya's neighbors and donors in bringing Kenya back from the brink was unprecedented and demonstrated the potential of sustained diplomatic engagement in a crisis.

All Kenya's foreign partners and Kenyan civil society at large agree on the need for far-reaching reform of the justice sector, the constitution, land distribution and ownership, and major measures to stem corruption and impunity. Without major changes, including the prosecutions recommended by the Waki Commission, the risk of violence recurring remains high. The government will need significant sustained pressure from all sides to set up the special tribunal recommended by Waki and bring those responsible for political violence to justice. The International Criminal Court indicated that crimes committed in Kenya are under analysis by its prosecutor.

Due to their close relationship with the Kenyan military, the UK and the US have a particular responsibility and an opportunity to encourage an independent investigation into atrocities committed in Mt. Elgon.